

ASSEMBLY BILL

No. 1093

Introduced by Assembly Member Yamada

February 27, 2009

An act to amend Section 3600 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as introduced, Yamada. Workers' compensation.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, and in the course of, employment.

This bill would provide that no workers' compensation claim shall be denied solely because the motivation behind what caused the employee's injury or death was related to an immutable personal characteristic of that employee.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3600 of the Labor Code is amended to
2 read:
3 3600. (a) Liability for the compensation provided by this
4 division, in lieu of any other liability whatsoever to any person
5 except as otherwise specifically provided in Sections 3602, 3706,
6 and 4558, shall, without regard to negligence, exist against an
7 employer for any injury sustained by his or her employees arising

1 out of and in the course of the employment and for the death of
2 any employee if the injury proximately causes death, in those cases
3 where the following conditions of compensation concur:

4 (1) Where, at the time of the injury, both the employer and the
5 employee are subject to the compensation provisions of this
6 division.

7 (2) Where, at the time of the injury, the employee is performing
8 service growing out of and incidental to his or her employment
9 and is acting within the course of his or her employment.

10 (3) Where the injury is proximately caused by the employment,
11 either with or without negligence.

12 (4) Where the injury is not caused by the intoxication, by alcohol
13 or the unlawful use of a controlled substance, of the injured
14 employee. As used in this paragraph, "controlled substance" shall
15 have the same meaning as prescribed in Section 11007 of the
16 Health and Safety Code.

17 (5) Where the injury is not intentionally self-inflicted.

18 (6) Where the employee has not willfully and deliberately caused
19 his or her own death.

20 (7) Where the injury does not arise out of an altercation in which
21 the injured employee is the initial physical aggressor.

22 (8) Where the injury is not caused by the commission of a
23 felony, or a crime which is punishable as specified in subdivision
24 (b) of Section 17 of the Penal Code, by the injured employee, for
25 which he or she has been convicted.

26 (9) Where the injury does not arise out of voluntary participation
27 in any off-duty recreational, social, or athletic activity not
28 constituting part of the employee's work-related duties, except
29 where these activities are a reasonable expectancy of, or are
30 expressly or impliedly required by, the employment. The
31 administrative director shall promulgate reasonable rules and
32 regulations requiring employers to post and keep posted in a
33 conspicuous place or places a notice advising employees of the
34 provisions of this subdivision. Failure of the employer to post the
35 notice shall not constitute an expression of intent to waive the
36 provisions of this subdivision.

37 (10) Except for psychiatric injuries governed by subdivision (e)
38 of Section 3208.3, where the claim for compensation is filed after
39 notice of termination or layoff, including voluntary layoff, and the
40 claim is for an injury occurring prior to the time of notice of

1 termination or layoff, no compensation shall be paid unless the
2 employee demonstrates by a preponderance of the evidence that
3 one or more of the following conditions apply:

4 (A) The employer has notice of the injury, as provided under
5 Chapter 2 (commencing with Section 5400), prior to the notice of
6 termination or layoff.

7 (B) The employee's medical records, existing prior to the notice
8 of termination or layoff, contain evidence of the injury.

9 (C) The date of injury, as specified in Section 5411, is
10 subsequent to the date of the notice of termination or layoff, but
11 prior to the effective date of the termination or layoff.

12 (D) The date of injury, as specified in Section 5412, is
13 subsequent to the date of the notice of termination or layoff.

14 For purposes of this paragraph, an employee provided notice
15 pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6,
16 72411, 87740, and 87743 of the Education Code shall be
17 considered to have been provided a notice of termination or layoff
18 only upon a district's final decision not to reemploy that person.

19 A notice of termination or layoff that is not followed within 60
20 days by that termination or layoff shall not be subject to the
21 provisions of this paragraph, and this paragraph shall not apply
22 until receipt of a later notice of termination or layoff. The issuance
23 of frequent notices of termination or layoff to an employee shall
24 be considered a bad faith personnel action and shall make this
25 paragraph inapplicable to the employee.

26 (b) Where an employee, or his or her dependents, receives the
27 compensation provided by this division and secures a judgment
28 for, or settlement of, civil damages pursuant to those specific
29 exemptions to the employee's exclusive remedy set forth in
30 subdivision (b) of Section 3602 and Section 4558, the
31 compensation paid under this division shall be credited against the
32 judgment or settlement, and the employer shall be relieved from
33 the obligation to pay further compensation to, or on behalf of, the
34 employee or his or her dependents up to the net amount of the
35 judgment or settlement received by the employee or his or her
36 heirs, or that portion of the judgment as has been satisfied.

37 (c) *No workers' compensation claim shall be denied solely*
38 *because the motivation behind what caused the employee's injury*

- 1 *or death was related to an immutable personal characteristic of*
- 2 *that employee.*

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